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Civil Revision Application No 1713 of 95

Date of decision: 02/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KALUPURI MANIPURI BAWA & 2

vs

SAMASTHA LINCH'S BAROT KURDEVIKALKAMAT & 2

Appearance:

Coram : MR.JUSTICE S.D.SHAH

Date : 2nd February, 1996

ORAL JUDGEMENT

1. This Civil Revision Application is directed against the judgment and order passed by the Second Extra Assistant Judge, Mehsana, dated 9th August, 1995, whereby he has allowed the Civil Misc. Appeal and has quashed and set aside the order passed below Exhibit-5 by Second Joint Civil Judge (SD) in Regular Civil Suit No. 164 of 1994. The respondent plaintiff instituted the aforesaid suit as public trust through its trustees, and applied for injunction restraining the petitioners defendants who are poojaris from interfering with their possession over parcels of land bearing old Survey No. 36 : Block No. 1080 and old Survey No. 45 and 46 : Block No. 1086. The trial court after appreciating the pleading and the documentary evidence, rejected the application for temporary injunction by judgment and order dated 13th January, 1995.

2. Being aggrieved thereby the appeal was preferred before the Extra Assistant Judge, who has allowed the appeal in toto.

3. At the hearing of this Appeal, having heard the learned Counsel appearing for both the parties, following facts clearly emerged as undisputed.

(i) The defendants poojaris have right to perform seva puja of the temple in question which is run and controlled by a public trust known as "Samastha Linchna Barot Kuldevi Kalkamata". Admittedly, the trust is a registered trust under the provision of the Bombay Public Trust Act.

(ii) In the register maintained by the Charity Commissioner, two properties are shown to be the properties belonging to the public trust, namely, Survey Nos. 45 and 46 : Block No. 1086.

(iii) There is an Entry in the Public Trust Register providing some share from the income of the said two fields exclusively to the poojaris for their services rendered by them as poojaris.

(iv) With respect to the land bearing Block No. 1080, there is no dispute that it belongs to the trust and the order

passed by the lower court does not affect the said parcel of land.

3. In the interest of justice, it is directed that the original plaintiff shall cultivate the aforesaid parcels of land bearing Block No. 1086 and shall deposit the total income thereof in the trial court. The trial court shall after appropriate enquiry, call upon the plaintiffs to deposit the amount of income based on the number of crops - Ravi crop and Kharif crop, and if one crop is taken, income of such crop. From the amounts so deposited in the trial court, after deducting the reasonable expenses which may be expended by the trustees towards cultivating the crop, the balance amount of income shall be paid over to the poojaris towards the right reserved to them as per the stipulation contained in the Entry in the Public Trust Register. This direction should be construed in light of the Entry made in the Public Trust Register and whatever amount the poojaris are entitled to from such income, shall be paid over to them without any objection whatsoever.

4. For the aforesaid purpose of cultivating the said parcel of land bearing Block No. 1086, the plaintiff shall act as Receiver of the Court and their possession shall be as Receiver of the Court till the suit is decided.

5. Subject to the aforesaid, the order passed by the lower appellate court is upheld and Civil Revision Application is partially allowed. Rule is partially made absolute. There shall be no order as to costs. The interim relief granted earlier stands vacated.
